Supreme Court, U.S.
FILED
NOV 30 1992
OFFICE OF THE CLERK

92-944

NO. _____

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

M. WILEY CATLETT, "the Heir",
OF THE ESTATE OF ERNEST
LUTHER CATLETT, DECEASED PETITIONER,

v.

JOHNNY W. RICHARDS, II, INDIVIDUALLY, and as SUCCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DEC'D., FLORENCE IONA CATLETT, ROBERT M. BURNETT, JUDGE, PROBATE COURT NUMBER ONE, TARRANT COUNTY, TEXAS RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE SECOND COURT OF APPEALS
DISCTICT OF TEXAS THROUGH
THE SUPREME COURT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

M. WILEY CATLETT, "the Heir"
1495 Sunnyside Avenue
Highland Park, Ill. 60035
(708) 831-3893 Pro Se

40pp

INDEX TO APPENDICES

"A" The Supreme Court of Texas overruled Petition for rehearing(Sept. 9, 1992)

"B" The Supreme Court of Texas denied writ of error with "Writ Denied" notation (June 24, 1992) No notice given to Johnny W. Richards

"B.1" Order of the Second Court of Appeals of Texas overruled "Heir's" Mot. for rehearing (April 22, 1992)

"C" Order of the Second Court of Appeals of Texas GRANTED the Heir's Ext. of Time to Apr. 13, 1992(issued Mar. 26, 1992)

"D" Order of the Second Court of Appeals of Texas DENIED the "Heir's" leave for (issued March 16, 1992)

"E" Opinion and Judgment of the Second Court of Appeals of Texas dismissing the Heir's appeal(FEB. 25, 1992)

"F" Order of the Court of Appeals GRANTED IN PART the Heir's Mot. for Ext. of Time to file brief of response to FEB. 28, 1992 (issued February 18, 1992)

"G" Order of the Court of Appeals overruled the Heir's exceptions to part of Order of Dec. 9, 1991(issued DEC. 31, 1992

"H" Order of the Court of Appeals GRANTED the Heir's Mot. for Ext. Time to file tran to JAN. 6, 1992(issued DEC. 9, 1992 and DENIED request to take judicial notice

"I" Peggy Ramsey, Official Court Reporter Affirmation that no hearings were held on important item in Probate Court No. 1.

"J" Judge Burnett's ORDER CLOSING ESTATE AND DISCHARGING PERSONAL REP. SIGNED August (with February lined out without initials of the judge) 1991

"K" Successor Adm. Richards "APP. to CLOSE ESTATE AND TO DISCHARGE PERSONAL REPRESENTATIVE (Sworn FEB. 13, 1991)

"L" J U D G M E N T Court of Appeals Second Supreme Judicial District of Texas, Fort Worth No.2-82-212-CV, (81-8158-B below) Denton County, Texas Reversed and Remanded with costs against Florence Iona Catlett (May 18, 1983)

"M" DESCRIPTIONS OF THE AUBREY, TEXAS FARM in "FLO'S" PETITION PREPARED BY Attorney John R. Lively for "Flo" and placed in several orders and judgments

"N" Judge Burnett's FEB 8, 1985 ORDER AUTHORIZING PAYMENT OF $41,684.00 to "Florence Iona Catlett's attorney, John R. Lively from Ernest's estate.

"O" Judge Burnett's Mar. 11, 1985 ORDER AUTHORIZING PAYMENT OF $5,172.48 to attorney Steven J. Williams

"P" Judge Burnett's FEB. 20, 1985 ORDER AUTHORIZING PAYMENT of $2,400 in attorney's fees and $74.00 in costs

"Q" Florence Iona Catlett's attorney, John R. Lively's JANUARY 25, 1985 "AUTHENTICATED CLAIM OF JOHN R. LIVELY" for $42,228.00 against Ernest's Estate He failed to inclued offset of $1,233.33

"R" On May 18, 1988, the Successor Administrator ("Richards") Rejected the alleged claim of the lawfirm of Winn, Beaudry & Virden of Dallas, Tx. against Ernest's Estate

"S" February 13, 1986, MOTION AND ORDER FOR PAYMENT OF CLAIM of surveyors SCHOELL FIELDS & ASSOC. purported $3,178.17 against Ernest's Estate. Judge Burnett ordered same paid

"T" Judge Burnett's ORDER of July 18, 1984 granting "Richards" the authority to sell some purported 39 acres a part of the Heir's grandfather's & grand mother's 225.1 acre Aubrey, Texas Farm.

"U" October 23, 1984, "FREZZE AGREEMENT" with the Allied Northeast Bank, Nat'l. Ass'n, Acc't. No.301-4206 (NOW) checking, "Richards'" deposited $77,560.00

"V" Judge John Narsutis' ORDER FOR PAYMENT INCURRED AS A RESULT OF PRIOR COURT ORDER, signed & filed on FEB. 13, 1986 Surveyors SCHOELL, FIELDS & ASSOC., a/k/a Dewey Fields; purported $2,043.75, survey & $1,134.42 interest at 18% per year, total (also) $3,178.17 (SEE APPENDIX "S" herein) In Flo's Partition action in Denton Co., Tx.,No.81-8158-B. The prior Court order was REVERSED & REMANDED on MAY 18, 1983 OPINION Second Court of Appeals at Fort Worth, Tx.,No.2-82-212-CV)

APPENDEX "A"

THE SUPREME COURT OF TEXAS
P.O. Box 12248
Austin, Texas 78711

Re:
Case No. D-2437

Sept. 9, 1992

Style:
M. WILEY CATLETT, HEIR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, Petitioner,
vs.
JOHNNY W. RICHARDS, II, INDIVIDUALLY, AND AS SUCCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, ET AL
Respondents

Mr. M. Wiley Catlett
1495 Sunnyside Ave.
Highland Park, Il 60035

Mr. Tim Curry
Criminal District Attorney
401 W. Belknap Street
Ft. Worth, Tx. 76196-

Mr. Van Thompson, Jr.
Ass't. Dist. Attorney
401 W. Belknap St.
Ft. Worth, Tx 76196-0201

Ms. Sandra K. Houston
Law Office of John R.
1155 Burnett Plaza
801 Cherry Street
Ft. Worth, Tx. 76102

Mr. John R. Lively
Law Office of John R. Lively
1155 First RepublicBank Tower
801 Cherry Street
Fort Worth, Tx. 76102

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled case.

Respectfull yours,
JOHN T. ADAMS, CLERK
BY: Tencha Damian, Deputy

cc: Honorable Robert M. Burnett

THE SUPREME COURT OF TEXAS
P.O. BOX 12248
Austin, Texas 78711

Re:
Case No. D-2437 June 24, 1992
Style:
M. WILEY CATLETT, HEIR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED v. JOHNNY W. RICHARDS II, INDIVIDUALLY, AND AS SUCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, ET AL.

Mr. M. Wiley Catlett
1495 Sunnyside Ave.
Highland Park, IL 60035

Mr. Tim Curry
Criminal District Attorney
401 W. Belknap Street
Ft. Worth, Tx.76196-

Mr. Van Thompson, Jr.
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801 Cherry Street
Ft. Worth, Tx. 76102

Mr. John R. Lively
Law Office of John R. Lively
1155 First RepublicBank Tower
Fort Worth, Tx. 76102

Dear Counsel:

Today, the Supreme Court of Texas denied the above referenced application for writ of error with the notation, "Writ Denied."

Sincerely,
JOHN T. ADAMS, Clerk
By Courtland Crocker,
Deputy

cc: Honorable Robert M. Burnett

(Note: Please notice that no letter was sent to: Mr. Johnny W. Richards, II
7305 Grapevine Hwy.
N. Richland Hill, Tx. 76180.)

COURT OF APPEALS

SECOND COURT OF APPEALS DISTRICT OF TEXAS

FORT WORTH

M. Wiley Catlett, Heir

vs. No. 2-91-213-CV

Johnny W. Richards, II, et al

O R D E R

On this day came on to be considered the motion of Appellant, M. Wiley Catlett for rehearing and the response of appellee, Florence Iona Catlett.

It is the opinion of this Court that the motion for rehearing should be and is hereby overruled. It is the order of this Court that the opinion and judgment of February 25, 1992 stand unchanged.

The Clerk of this Court is directed to transmit a copy of this Order to the attorneys of record.

It is so ordered

SIGNED THIS 22nd day of April, 1992.

/s/ Sam J. Day
SAM J. DAY
JUSTICE

OVRULE.CVmj

COURT OF APPEALS

SECOND COURT OF APPEALS DISCTICT OF TEXAS

FORT WORTH

M. Wiley Catlett, Heir

vs. No. 2-91-213-CV

Johnny W. Richards, II, et al

O R D E R

On this day came on to be considered the motion of appellant, M. Wiley Catlett, Heir, for extension of time to file motion for rehearing.

The motion is GRANTED. The appellant's motion for rehearing is ordered due April 13, 1992.

The Clerk of this Court is directed to transmit a copy of this order to the attorneys of record.

SIGNED this 26th day of March, 1992

/s/ Sam Day
Sam Day
JUSTICE

XREH.CVje

APPENDEX "D" App. 4

COURT OF APPEALS

SECOND COURT OF APPEALS DISCTICT OF TEXAS

FORT WORTH

M. Wiley Catlett, Heir, Of The Estate of Ernest Luther CATLETT, DECEASED

vs. No. 2-91-213-CV

Johnny W. Richards, II, Individually, And As Successor Dependent Administrator Of The Estate of Ernest Luther Catlett, Robert M. Burnett, Judge, Probate Court Number One, Tarrant County, Texas

O R D E R

On this day the Court has considered the motion of appellant, M. Wiley Catlett, for leave to have the "heir's" two motions mailed on Feb. 26th & 27th, 1992 considered as a motion for rehearing and appellees responses.

The motion is DENIED.

The Clerk of this Court is directed to transmit a copy of this Order to the attorneys of record.

SIGNED this 16th day of March, 1992.

/s/ Sam Day
Sam Day
JUSTICE

ORDER.CVrf

NO. 2-92-213-CV

COURT OF APPEALS

SECOND COURT OF APPEALS DISTRICT OF TEXAS

FORT WORTH

M. WILEY CATLETT, HEIR APPELLANT

VS.

JOHNNY W. RICHARDS, II,
INDIVIDUALLY AND AS ADMINISTRATOR,
AND FLORENCE IONA CATLETT APPELLEES

FROM THE PROBATE COURT NO. ONE OF TARRANT COUNTY

OPINION AND JUDGMENT ON DISMISSAL OF APPEAL

On this day came on to be considered by the Court the motion of appellee, Florence I. Catlett, to dismiss appeal. It is this Court's opinion that this motion should be granted.

It is therefore ordered, adjudged and decreed that this appeal be dismissed.

It is further ordered that appellant, M. Wiley Catlett, pay all costs of this appeal,

and that said costs be paid from the cash deposit in lieu of bond made with the clerk of the trial court, for which let execution issue, and that this decision be certified below for observance.

/s/ SAM DAY
SAM DAY
JUSTICE

PANEL D
FARRIS, MEYERS AND DAY, JJ
DO NOT PUBLISH
TEX. R. APP. P. 90(c)
FEB 25 1992
DISMIS.213mj

(Note: This ORDER & JUDGMENT of Justice Sam Day was signed without any date of signing, as such, TEX.R.CIV.PROC.,R.306a & R. 329b, subd.5, ExParte Godeke (TEX.SUP.CT.1962) 355 SW2d 701 and in which Justice Sam Day gave no reasons therein, other than he relied on the misleading, late (FEB. 7, 1992) filed motion of respondent, Florence Iona Catlett, "MOTION TO STRIKE & FOR DAMAGES" of FEB. 7, 92. A motion to Strike the whole pleadings is in effect a general demurrer. City of Brownville v Galvan, 139 TEX. 128, 162 SW2d 98(1942). The use of a general demurrer has been eliminated from TEXAS PRACTICE: BANKER v. JEFFERSON COUNTY NO. ONE, 277 SW2d 130 (TEX.CIV.APP. 1950) n.w.h.; RULE 90, TEX.R.CIV.PROC.)

Hence, the ORDER & JUDGMENT is null & void because the same is also based on Florence I. Catlett's (late FEB. 7, 1992) "MOTION TO STRIKE & FOR DAMAGES which has been eliminated from Texas practice; hence, without authority.

COURT OF APPEALS

SECOND COURT OF APPEALS DISTRICT OF TEXAS

FORT WORTH

M. Wiley Catlett, Heir, of the Estate of Ernest Luther Catlett, Deceased

vs. No. 2-91-213-CV

Johnny W. Richards, II, Individually and as Successor Dependent Administrator of the Estate of Ernest Luther Catlett, Deceased, and Florence Iona Catlett

ORDER

On this day came on to be considered the motion of appellant, M. Wiley Catlett, for extension of time to file brief or response and continuance of hearing.

The motion is GRANTED IN PART, Appellant's responses to appellee's motion to strike appellant's brief and for damages; and to appellee's motion to dismiss appeal are ordered due February 28, 1992.

The hearing on said motions remains scheduled at 9 A.M. March 4, 1992.

The Clerk of this Court is directed to transmit a copy of this Order to the attorneys of record.

SIGNED THIS 18th day of February, 1992

/s/ David F. Farris

David F. Farris
Justice

XBRAPE,CVmj

COURT OF APPEALS

SECOND COURT OF APPEALS DISTRICT OF TEXAS

FORT WORTH

M. Wiley Catlett, Heir

vs. No. 2-91-213-CV

Johnny W. Richards, II Administrator and individually

O R D E R

On this day the Court considered the exceptions of Appellant, M. Wiley Catlett, Heir to part of Order of December 9, 1991.

The motion is OVERRULED.

The Clerk of this Court is directed to transmit a copy of this Order to the attorneys of record

SIGNED this 31st day of December, 1991

/s/ H. Tod Weaver
H. Tod Weaver
CHIEF JUSTICE

ORDER,CVmj

COURT OF APPEALS

SECOND COURT OF APPEALS DISTRICT OF TEXAS

FORT WORTH

M. Wiley Catlett, Heir of The Estate of Ernest Luther Catlett, Deceased

vs. No. 2-91-213-CV

Johnny W. Richards, II, Administrator and individually

O R D E R

On this day came on to be considered the motion of appellant, M. Wiley Catlett, heir, to extend time to file transcript and statement of facts.

The motion to extend time to file the transcript is GRANTED . The transcript is ordered due January 6, 1992.

To the extent that said motion requests permission to file, as a part of the statement of facts in this case, a statement of facts in cause no. 81-8158-B in the 158th District Court of Denton County, or requests this court to take judicial notice of the statement of facts in that case, the motion is DENIED.

The Clerk of this Court is directed to transmit a copy of this Order to the attorneys of record and clerk of trial court.

SIGNED THIS 9th day of December, 1991.

/s/ H. Tod Weaver

H. Tod Weaver
CHIEF JUSTICE

XTRANS.CVmj

No. 2-91-213-CV

IN THE COURT OF CIVIAL APPEALS
FOR THE SECOND SUPREME JUDICIAL DISTRICT
OF TEXAS AT FORT WORTH

M. WILEY CATLETT, Heir, OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED — APPELLANT

VS.

JOHNNY W. RICHARDS, II, INDIVIDUALLY, AND AS SUCCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, FLORENCE IONA CATLETT, ROBERT M. BURNETT, JUDGE, PROBATE COURT NUMBER ONE, TARRANT COUNTY, TEXAS — APPELLEES

AFFIRMATION TO REQUEST FOR STATEMENT OF FACTS

I, PEGGY RAMSEY, Official Court Reporter of Probate Court Number One of Tarrant County, Texas, do solemnly swear and affirm that I have diligently searched my records and have found nothing to indicate that I reported hearings in Cause Number 77-2726-1, styled The Estate of Ernest Luther Catlett, deceased, involving the following matters:

1. Motion and Order for Payment of Claim for $3,178.17 filed on February 13, 1986,

regarding payment to Schoell, Field & Associates, Inc.

2. Order Approving Annual Account filed on or about October 18, 1985, or authorization of payment of claims totalling $66,373.09.

3. Motion for authority to Sell Real Property filed June 18, 1984, by Johnny W. Richards, II, or matters concerning a sale on October 19, 1984.

4. Increase of administrator's bond on or about October 25, 1984, or any other date.

Signed this the 21st day of November, 1991.

/s/ Peggy Ramsey
PEGGY RAMSEY

Sworn to and subscribed before me by Peggy Ramsey this the 21st day of November, 1991, to certify which witness my hand and seal of office.

/s/ Faye J. McNeely
Notary Public
State of Texas

FAYE J. McNEELY
Notary Public State of Texas
My Commission Expires 4-7-94

No. 77-27262

ESTATE OF ERNEST LUTHER CATLETT, DECEASED

IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

ORDER CLOSING ESTATE AND DISCHARGING PERSONAL REPRESENTATIVE

On this day the Court heard and considered the Application To Close Estate and Discharge Personal Representative, filed herein by the Successor Administrator of this Estate, and after hearing the evidence in support of such Application, the Court finds that this Estate has been fully administered; that the Account For Final Settlement has previously benn approved; that the Administrator has delivered all of the property of the Estate remaining on hand to the persons entitled to receive the same; and that this Estate should be closed.

IT IS, THEREFORE, ORDERED that Johnny W. Richards, II, Administrator of this Estate, is hereby discharged from his trust; that Western Surety Company, Surety on the Bond of the

Successor Administrator, is hereby discharged from further liability under such bond; and this Estate is hereby declared to be closed.

SIGNED this 6th day of ~~February~~ August, 1991.

/s/ Robert M. Burnett

JUDGE PRESIDING

ORDER SOLO PAGE

(Note: February was lined out and the month of August written in, with no initials of Judge Robert M. Burnett whose alleged signature is a rubber stamp.)

(Further Note: On AUG. 24, 1991, the "heir" received two copies each of:
(A) - "Application to Close Estate & to Discharge Personal Representative" (R.274,Item #3) which was FILE MARKED: FEB. 19, 1991, but not mailed to the "heir" by "Richards" until August 15, 1991, and APPENDEX "H"
(B) - Judge Burnett's "Order Closing Estate and Discharging Representative,"APPENDEX "G" signed on August 6, 1991, but not mailed to the "heir" by "Richards" until August 15, 1991. (R.276,Item#1)
(On Sept. 4, 1991, FILED, The "heir's" "Motion to "Set-Aside" Judge Burnett's August 6, 1991 ORDER CLOSING ESTATE and DISCHARGING PERSONAL REPRESENTATIVE" (R.277,Item#2) - Overruled by operation of law - 30 days later.)

No. 77-27262

ESTATE OF ERNEST LUTHER CATLETT, DECEASED

IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

APPLICATION TO CLOSE ESTATE AND TO DISCHARGE PERSONAL REPRESENTATIVE

JOHNNY W. RICHARDS, II, Successor Administrator of the Estate of Ernest Luther Catlett, Deceased, as Applicant, furnishes the following information to the Court:

I.

This Court has previously, on February 12, 1991, entered an Order approving the Account for Final Settlement of this Estate and ordering the Applicant to deliver the property remaining on hand to the persons entitled to receive such property.

II.

Applicant has fully complied with such Order by paying a reasonable commission and fee of $1,000.00 to Johnny W. Richards, II, by paying the sum of $7,561.14 to Winn, Beaudry & Virden, former attorneys for M.

Wiley Catlett and by paying the balance of the Estate, $30.30 to M. Wiley Catlett. There is no property belonging to the Texas Estate remaining in the hands of Applicant.

Applicant requests this Court enter an Order discharging Applicant from his trust, discharging Western Surety Company, the Surety on Applicant's Bond from further liability, and declaring the Estate closed.

APPLICATION TO CLOSE ESTATE AND TO DISCHARGE PERSONAL REPRESENTATIVE PAGE ONE

/s/ J. W. Richards, II
J. W. RICHARDS, II
Suite 101-102
N. Richland Hills, Texas 76180
(817) 498-4471
TBID: 16848300

SUCCESSOR ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED

STATE OF TEXAS

COUNTY OF TARRANT

BEFORE ME, a Notary Public in and for said county, this date appeared JOHNNY W. RICHARDS, II, to me known to be the Administrator of the Estate of Ernest Luther Catlett, Deceased, who stated on his oath that the

above Application to Close Estate and to Discharge Personal Representative is in all things true and correct.

/s/ J. W. Richards, II

JOHNNY W. RICHARDS, II, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME ON the 13th day of February, 1991

/s/ Patsy A. Gentry
Notary Public in and for
the State of Texas

Seal PATSY A. GENTRY
Notary Public, State of Texas
My Commission Expires
Sept. 19, 1991

APPLICATION TO CLOSE ESTATE AND TO DISCHARGE PERSONAL REPRESENTATIVE

PAGE TWO

(Note: Johnny W. Richards, II's sworn statement is false in that the "heir", M. Wiley Catlett never received any thing from his father's estate, let alone, the $30.30 mention herein. Judge Robert M. Burnett is charge with extrinsic fraud in that he carried out his threat on August 19, 1982, by saying: " I'll see that you don't get anything from your father's estate" which was outside of his immunity.)

COURT OF APPEALS
Second Supreme Judicial District

Forth Worth, Texas, May 18, 1983

William L. Smith, Jr. 202-216 Texas Building
Denton, TX 267-2881

Dear Sir:

The Judgment of the Trial Court in case of M. WILEY CATLETT, Admin. of Estate of Ernest Luther Catlett, Deceased vs. Florence IONA CATLETT No. 2-82-212-CV from Denton County, was reversed and remanded today. Copies of theopinion and judgment of this Court are hereto attached.

Yours truly,
Yvonne Palmer, Clerk

J U D G M E N T

M. Wiley Catlett, Admin. of Estate of Ernest Luther Catlett, Deceased
2-82-212-CV vs.
Florence Iona Catlett

From the 158th Dist. Court,
Denton County
(81-8158-B)
May 18, 1983
Opinion by Justice Burdock (NFP)

This cause came on to be heard on the transcript of the record and the same having been reviewed, it is the opinion of the Court that there was error in the judgment. It is

therefore ordered, adjudged and decreed that the judgment of the trial court is reversed and the cause remanded.

It is further ordered that appellee, Florence Iona Catlett, pay all costs of this appeal, for which let execution issue, and that this decision be certified below for observance.

NO. 2-82-212-CV

IN THE COURT OF APPEALS FOR THE

SECOND SUPREME JUDICIAL DISTRICT OF TEXAS

M. WILEY CATLETT, Admin. of
Estate of Ernest Luther Catlett,
Deceased — APPELLANT

vs.

FLORENCE IONA CATLETT — APPELLEE

FROM THE 158th DISTRICT COURT OF DENTON COUNTY

OPINION

Appeal is taken from an order imposing sanctions and granting a default judgment in favor of appellee, Florence Iona Catlett.

We reverse and remand.

Originally, appellee, Florence IonaCatlett, R. David Broiles and the firm of Brown, Herman, Scott, Dean & Miles sued appellant, M. Wiley

Catlett, a resident of Highland Park, Ill. and Administrator for the estate of Ernest Luther Catlett for partition of real property located in Denton County, Texas. R. David Broiles and the firm of Brown, Herman, Scott, Dean & Miles have since been severed from the main cause of action in the trial court and are not involved in this appeal. . . . . .

After reviewing the record and the time frame in which the above occurred, appellant was essentially precluded from complying with the court order. In the interest of justice, the trial court should have given appellant a reasonable amount of time after notice, in which to comply with the order. Plodzik v. Owens-Corning Fiberglass Corp. 549 S.W.2d 52 (Tex.Civ. App.--Austin 1977) no writ) We find that the trial court was arbitrary and unreasonable in striking appellant's answer and granting a default judgment for failure to comply with the discovery orders and that appellant should have been given a reasonable amount of time in order to make arrangements to appear in the scheduled deposition.

Due to our disposition of this case, appellant's other points of error need not be addressed.

The judgment of the trial court is reversed and the cause is remanded.

/s/ William E. Burdock
William E. Burdock
JUSTICE

PANEL B
FENDER, C.J.: BURDOCK AND SPURLOCK II, JJ.
DO NOT PUBLISH
TEX. R. CIV. R. 452
MAY 18, 1983

DESCRIPTIONS OF THE AUBREY, TEXAS FARM
IN FLORENCE IONA CATLETT'S PETITION
FILED BY ATTORNEY, JOHN R. LIVELY
ON FEB. 8, 1983 IN PROBATE COURT
TARRANT COUNTY, TX.No.77-2726-1

All that real property located in Denton County, Texas, owned by Florence I. Catlett and being more particularly described as follows:

FIRST TRACT: All of the following described real estate situated in Denton County, Texas, about 1/2 mile west of the town of Aubrey, Texas containing 77.93 acres, more or less, and consisting of the following surveys and parts of surveys, to-wit:

BEING 80 acres of land out of the Dennis Cowan Survey:

BEGINNING at the Northwest corner of said Cowan Survey, same being also the Southwest corner of the J. M. Fischer Survey; THENCE East 713-1/2 varas, stake for corner; THENCE South 633 varas corner; THENCE West 713-1/2 varas corner, the West Boundary Line of said Cowan Survey; THENCE North 633 varas to the place of beginning containing 80 acres of land, described in Deed of record in Volume 67, Page 172, Deed Records,Denton County, Texas.

SAVE AND EXCEPT:

BEING a tract of land lying partially in the John Jordan Survey, Abstract No. 678, and the Dennis Cowan Survey, Abstract No. 304, owned by C. E. Catlett:

BEGINNING at the Northwest corner of the above said tract, said corner being survey station

543 plus 47;
THENCE South along the West boundary line of said tract to a point 50 feet opposite and at right angles to the center line of said Highway; THENCE North 89 degrees 41 minutes East along a line 50 feet distant from and parallel to the center line of said Highway to a point 50 feet opposite and at right angles to survey station 554 plus 50; THENCE in an Easterly direction along a line 50 feet distant from and parallel to a 1 deg. curve to the right to a point 50 feet opposite and at right angles to survey station 555 plus 50; THENCE South 88 degrees 19 minutes East along a line 50 feet distant from and parallel to the location line of said Highway to a point in the East boundary line of said tract; THENCE North along the East boundary line of said tract to its Northeast corner, said corner being 10 feet South, more or less, from survey station 562 plus 25; THENCE 88 degrees 19 minutes West along the North boundary line of said tract to survey station 555 plus 00; THENCE South 89 degrees 41 minutes West along the North boundary line of said tract to the point of beginning and containing 2.07 acres, more or less, 1.24 acres being within the limits of the present right-of-way as shown by right-of-way map on file with the State Highway Engineer and another on file with the County Clerk of Denton County, Texas, and bearing date of January, 1931.

SECOND TRACT: Being a tract of land of which J. L. Catlett was the original owner and patentee, said land being conveyed to said J. L. Catlett by Patent No. 294, vol. 1, dated Nov. 18, 1881, recorded in Records of Denton County, Texas, on February 23, 1882, to which record reference is made herein for a full description of said land.

THIRD TRACT: Being a part of the George Lane Survey in Denton County, Texas, described as follows:

BEGINNING at the SE corner of the 320 acre survey in the name of P. H. Viser; THENCE East 433 varas to a point oak blazed on four sides; THENCE North 712 1/2 varas a stake for corner on the EB line of the said George Lane Survey; THENCE West 433 varas a stake in the WB line of the said George Lane Survey; THENCE South 712 1/2 varas to the place of beginning, containing 54 1/2 acres of land more or less, being the same land conveyed to J. L. Catlett by Thos. B. Cagle and wife, Deed recorded in Volume 31, Page 566, Denton County Deed Records, to which reference is here made.

FOURTH TRACT: Being 54 acres of land in Denton County, Texas, a part of the Stephen Cantwell 160 acre survey, described as follows:

BEGINNING at the SW corner of the said Cantwell Survey; THENCE East 540 varas to the SE corner of the said Cantwell Survey; THENCE North 566 varas to John C. Wilson's south line; THENCE West 540 varas; THENCE South 566 varas to the place of beginning, being the same land conveyed to J. L. Catlett by J. G. Loudder and wife, S. A. Loudder, on November 12, 1880, Deed of record in Record Book P, Pages 550 and 551, of Denton County Deed Records to which reference is here made.

FIFTH TRACT: Being a part of the John Jordan Survey in Denton County, Texas, and described as follows, to-wit:

Tract of 50 acres in the north end of the John Jordam Survey and bounded as follows, to-wit:

BEGINNING at the SW corner of said Jordan Survey; THENCE East 1179 varas to the NE corner of the same to a stake from which a Post Oak marked X bears S 20 degrees E 5 varas and another marked H, bears 7 varas; THENCE South 339 4/10 varas to a stake; THENCE West 1179 varas to a stake on the West line of the Jordan Survey; THENCE North 339 4/10 varas to the place of beginning, found in Deed Records, Book Y, Page 50, Deed Records, Denton County, Texas.

NUMBER 77-2726-1

ESTATE OF ERNEST LUTHER CATLETT, DECEASED	IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

ORDER AUTHORIZING PAYMENT OF CLAIM

On this day came on for hearing the authenticated Claim of John R. Lively and after due notice appeared John R. Lively, and Johnny W. Richards, II, the Successor Administrator, and the Court finding that the claim is in proper form, and the Court after hearing the evidence and considering the exhibits finds that the claim of John R. Lively is proper, that the Administrator has not disallowed same, and that the Estate of E. L. Catlett, deceased is indebted to John R. Lively in the sum of Forty-~~two~~ one Thousand-~~Two~~ six-Hundred Eighty-Four ~~Twenty Eight~~ and NO/100 Dollars ($41,684.00 (~~$42,228.00~~);

ORDERED that the Claim of John R. Lively in the sum of Forty-~~Two~~ one Thousand and Six Hundred ~~Twenty Eight~~ Eighty-Four and NO/100 Dollars ($41,684.00 (~~$42,228.00~~) against the Estate of E. L.

Catlett, Deceased, is ALLOWED by this Court.

It is further ORDERED that Johnny W. Richards, II, the Successor Administrator, pay to John R. Lively from the funds of the Estate the sum of Forty-~~Two~~ Thousand ~~Two~~ One Hundred ~~Twenty-Eight~~ Eighty-Six and NO/100 Dollars ($41,684.00) ~~($42,228.00)~~.

SIGNED this the 8th day of February, 1985.

/s/ Robert M. Burnett
JUDGE PRESIDING

2 / 20 / 85
11.00

No. 77-2726-1

ESTATE OF
ERNEST LUTHER
CATLETT, DEC'D.

IN THE PROBATE COURT
NUMBER ONE OF
TARRANT COUNTY, TEXAS

O R D E R

On the 20th day of February, 1985, came on to be considered STEVEN J. WILLIAMS' Application for Payment of Attorneys Fees. Steven J. Williams appeared in person and announced ready. Johnny W. Richards, II, Successor Administrator of the above-numbered and entitled Estate, appeared in person and announced ready.

After reviewing the pleadings and hearing the evidence and arguments of counsel, the court is of the opinion that such Application is well-taken and should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Steven J. Williams be paid attorneys fees in the amount of $5,172.48. Such fees were reasonably and necessarily incurred in connection with this Estate and represent a reasonable attorneys fee.

SIGNED March 11, 1985.

/s/Robert M. Burnett
JUDGE PRESIDING

No. 77-2726-1

ESTATE OF ERNEST LUTHER CATLETT, DECEASED	IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

O R D E R

On this date the Application of Successor Administrator for Payment of Fees and Costs was heard. After considering the pleadings and statements of fees submitted by Successor Administrator, the Court finds that such Application is well-taken and should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Successor Administrator be paid the sum of $2,400 as attorneys fees and $74.00 as costs incurred through the date of the signing of this order.

SIGNED February 20, 1985.

/s/ Robert M. Burnett
JUDGE PRESIDING

NO. 77-2726-1

ESTATE OF ERNEST LUTHER CATLETT, DECEASED	IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

"AUTHENTICATED CLAIM OF JOHN R. LIVELY"

1. JOHN R. LIVELY ("Claimant") is the owner of a claim against this Estate in the sum of $42,228.00. This claim is founded upon reasonable and necessary legal services incurred as the result of the breach of contract by the prior administrator of the Estate. Attached hereto as Exhibit "A" is an itemized statement of dates, services rendered and amount of time incurred. Claimant further states that a reasonable attorney's fee for the services described in Exhibit "A" in Tarrant County, Texas, at the time that they were rendered was $85.00 per hour.

2. Claimant requests allowance and payment of this claim of $42,228.00.

/s/ John R. Lively
JOHN R. LIVELY, Claimant
1130 Fort Worth Club Tower
Fort Worth, Texas 76102

STATE OF TEXAS

COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared JOHN R. LIVELY and after being duly sworn by me, stated that the foregoing claim is just and that all legal offsets, payments and credits known to claimant have been allowed.

/s/ John R. Lively
JOHN R. LIVELY, Claimant

SUBSCRIBED AND SWORN TO BEFORE ME by JOHN R. LIVELY on this the 25th day of January, 1985, to certify which witness my hand and seal of office

/s/ Gay Lemar
Notary Public in and for the
State of Texas
My commission expires 8-1-88

PLAINTIFF'S EXHIBIT "I" in the Complaint
(Note: See "Richards" Dec. 21, 1987 INVENTORY and APPRAISEMENT, page TWO, "There is one (1) claim due and owing the Estate in the amount of $1,233.33 held by John R. Lively, attorney at law, as a condemnation award."
/s/ Johnny W. Richards, II
Sworn to by "Richards" on Dec. 17, 1987
(R.197,Item#17.Vol.1680 pages 0791-0795)
On January 14, 1987, Judge Robert M. Burnett signed and entered same by his ORDER.

(NOTE: Copied page 1 only of Lively's Claim.

NO. 77-2726-1

IN THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED

IN THE PROBATE COURT NUMBER ONE TARRANT COUNTY, TEXAS

SUCCESSOR DEPENDENT ADMINISTRATOR'S REJECTION OF CLAIM

I, JOHNNY W. RICHARDS, II, the Successor Dependent Administrator of the Estate of Ernest Luther Catlett, Deceased, finding upon an examination of the claim of the lawfirm of Winn, Beaudry & Virden of Dallas, Texas presented to me as a claim against said Estate, but being unable to determine the full amount of the claim from the supporting documentation attached, do hereby reject the claim in its entirety.

DATED: May 18, 1988

/s/ Johnny W. Richards, II
JOHNNY W. RICHARDS, II
Successor Dependent Administrator of the Estate of Ernest Luther Catlett, Deceased

CAUSE NO. 77-2726-1

IN THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED

IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

MOTION AND ORDER FOR PAYMENT OF CLAIM

COMES NOW SCHOELL, FIELDS & ASSOCIATES, INC., Claimant herein, and moves this Court for payment of its claim in the amount of Three Thousand One Hundred Seventy-eight and 17/100 Dollars ($3,178.17) for services performed on behalf of the estate as ordered by the 158th Judicial District Court of Denton County, Tex. in Cause No. 81-8158-B styled "Florence Iona Catlett v. M. Wiley Catlett, et al.". Claimant would show that it was ordered to perform surveying services by the above referenced Court and that attached hereto as Exhibit "A" and incorporated herein by reference for all purposes is a detailed accounting of the services rendered which were reasonable and customary and a copy of the Order for Payment signed by the Judge of the 158th District Court is attached hereto as Exhibit "B" and incorp-

orated herein by reference for all purposes.

Claimant therefore requests that this Court order Johnny Richards, the Dependent Administrator of the Estate, to pay to Claimant the amount of $3,178.17 within ten (10) days of the date of signing of the Order For Payment.

Respectfully submitted,
SCHOELL, FIELDS & ASSOCIATES, INC.

By /s/ Claudia Fields,
CLAUDIA FIELDS,
AUTHORIZED AGENT

MOTION AND ORDER FOR PAYMENT - Page 1
EXHIBIT "A" (Note: None attached)
FILED: FEB. 13, 1986 (R.183,Item#20 EXHIBITS missing. "Richards'" was ordered to pay $3,178.17 within ten day of FEB. 13, 1986 and he did.

ORDER FOR PAYMENT

On this day came on to be heard Claimant's Motion for Payment of Claim and, after hearing the evidence and reviewing the Motion and the attachments thereto, the Court is of the opinion that the above is a valid claim and that the Motion should be granted and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Johnny Richards, dependent administrator for the Estate of Ernest Luther Catlett, Dec'd.

shall pay out of the funds of the estate the sum of $3,178.17 to SCHOELL, FIELDS & ASSOCIATES, INC. within ten (10) days of the signing of this order.

SIGNED on FEBRUARY 13, 1986.

/s/ Robert M. Burnett

JUDGE PRESIDING

MOTION AND ORDER FOR PAYMENT - Page 2

(NOTE: That survey firm, SCHOELL, FIELDS & ACCOCIATES, INC was contracted by attorney John R. Lively the attorney of Florence Iona Catlett a Respondent. See Attorney's purported Claim of 1-25-85: "12-1-82 Telephone conference with J. G. Green re: survey, contract with commissioner - Telephone conference with client re: status of report and survey - . . . " (R.139, Item#28; ST/F - FEB. 8, 1985 JOHN R. LIVELY. See Peggy Ramsey's, Official Court Reporter for Probate Court No. 1, Tarrant Co., Tx. PR/AFFIRM #1, Heir's #2certifying that no hearing were held in the Probate Court No. 1 on Schoell, Field & Assoc.'s $3,178.17 Claim ordered paid by the "heir's" father's Estate.)

SEE APPENDIX "V", No.81-8158-b,Denton Co.,Tx.

NO. 77-2726-1

IN RE: THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED

IN THE PROBATE COURT NUMBER ONE OF TARRANT COUNTY, TEXAS

O R D E R

On this the 18th day of July, 1984 came on to be heard the Motion for Authority to Sell Real Property previously filed herein. After consideration of the Motion, and the evidence and arguments of counsel, this court finds that such Motion is well-taken and should be granted.

IT IS DECREED that Johnny W. Richards, II, Successor Administrator of this Estate, shall have authority to sell the real property described in the Inventory and Appraisement previously filed herein. Such authority shall include any and all acts necessary to dispose of such property in a manner that will best benefit this Estate, including those acts set forth in the Motion previously filed by Johnny W. Richards, II.

It is further ordered that the proceeds MB of the sale shall be placed under a safekeeping Agreement.

SIGNED July 18, 1984.

/s/ Robert M. Burnett
JUDGE PRESIDING

(R.123, Item#37 & Item#38; June 18, 1984 FILED, "RICHARDS" "MOTION FOR AUTHORITY TO SELL REAL PROPERTY" with Exhibit "A" contracts

(NOTE: Said motion was served ONLY on attorney Douglas R. Hudman who on January 12, 1984 "FILED" Brown, Herman, Scott, Dean & Miles, "Hudman's clients" "APPLICATION TO REQUIRE REPRESENTATIVE TO APPLY FOR SALE OF REAL PROPERTY" vol.1438, pages 735 - 745; vol. 1407, pages 580; R.109,Item#47)

On OCT. 25, 1984, "FILED" "FREEZE AGREEMENT" with Allied Northeast Bank, Account No.301-4206 depositing $77,560.66 by "RICHARDS",

Approved on 10-25-84 by Judge Burnett.(R.134, Item#34; 39 acres of land purportedly belonging to Ernest's Estate, without any "NOTICE" or "HEARING" to the "heir" . Sold to some clients of "Richards" the AUBREY GROUP made up of Sharon L. Tolbert, David J. McGilvray and Joseph R. Kilianski for about $80,000.00. Well below th market price at that time. See Exhibit "A" of JOHN R. LIVELY'S JAN. 25, 1985 CLAIM for $42,228.00 in attorney's fees: Item, April 6, 1981 Telephone conferences from client re: prospective purchaser and verbal offers of $3,000.00 made by Pat Wilson.)

NO. 77-2726-1

IN THE ESTATE OF ERNEST LUTHER CATLETT DECEASED

IN THE PROBATE COURT NUMBER ONE TARRANT COUNTY, TEXAS

"F I L E D" 10-25-84

FREEZE AGREEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Allied Northeast Bank, Nat'l. Ass'n., 7001 Grapevine Hwy., Fort Worth, Texas by and through an officer of such institution, whose signature is duly affixed below, and does hereby certify that Johnny W. Richards, II, Administrator of the above captioned estate, shall deposit with such institution in checking(NOW) JWR II savings account No. 301-4206, funds belonging to said estate with such account balance as of the 29th day of October, 1984, being in the sum of $77,560.66.

Further, Allied Northeast Bank, Nat'l. Ass'n. 7001 Grapevine Hwy, Fort Worth, Texas, hereby certifies that it will not deliver to the said Administrator or any other person any of said funds so deposited, including any subsequent deposits to the account or any dividends

credited to the account, except upon the written authority of the Probate Court of Tarrant County, Texas, in accordance with Section 194 (5) of the Texas Probate Code, as ammended.

Witness the signature and seal of the said Allied Northeast Bank, National Association 7001 Grapevine Hwy., Fort Worth, Texas,, this 23rd day of October, 1984.

Allied Northeast Bank, Nat'l.Ass'n.

by: Evelyn Hewell, A. C.

APPROVED this 25th day of October, 1984.

/s/ Robert M. Burnett
JUDGE PRESIDING

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APPENDIX "V"

App. 40
FILED:
FEB. 13, 86

CAUSE NO.81-8158-b

FLORENCE IONA CATLETT IN THE DISTRICT COURT

VS. DENTON COUNTY, TX.

M. WILEY CATLETT, ET AL 158th JUDICIAL DISTRICT

ORDER FOR PAYMENT INCURRED AS A RESULT OF PRIOR COURT ORDER

On the 27th day of September, 1982, an order was signed by this Court ordering Schoell, Fields and Associates, a.k.a. Dewey Fields, to perform any services necessary to assist the Commissioners of this lawsuit in making a partition of all properties involved.

Schoell, Fields and Associates began this work on September 27, 1982, and concluded the work on January 14, 1983. The charges incurred totaled Two Thousand forty three dollars and 75/100 ($2043.75).

In addition, interest charges have accured at a rate of 1½% per month simple interest (18%) per year. These charges total One Thousand One Hundred thirty four dollars and 42/100 ($1134.42).

On this 13 day of February, 1986, we request this Court to render a Judgment in favor of Dewey Fields of Schoell, Fields and Associates in the amount of $3,178.17 for service performed as ordered by this Court.

/s/ Claudia Fields

Claudia Fields, Agent for Dewey Fields, Schoell, Fields and Associates

/s/ John Narsutis

Judge John Narsutis

VOL. 214 PAGE 983

F I L E D:
1986 FEB. 13 PM 12:1
GLADYS WHITTEN
by M. Carlton

(ATTENTION: Please note that APPENDIX "S" , App.33, 34, & 35 is the same claim by this Claimant, SCHOELL, FIELDS & ASSOCIATES, INC. of Denton, Tx. for $3,178.17 in two different Courts: Probate Court No.1, Cause No.77-2726-1 Tarrant County, Tx. and in the 158th District Court, Denton County, Tx., Cause No.81-8158-b. There is no showing that the Denton Co., Tx. was paid, also. However, it was "Flo's" attorney, John R. Lively, who contracted for that survey. See the circumstantial evidence in "Lively's" JAN. 25, 1985 purported Claim in No.77-2726-1 for $42,228.00 against Ernest's estate: "12-1-82 Telephone conference with J. C. Green re: survey, contract with commissioner - Telephone conference with client re: status of report and survey . . . "